

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:03-616-HMH
)	
vs.)	
)	OPINION AND ORDER
)	
Carlos Demond Robinson,)	
)	
Movant.)	

This matter is before the court on Carlos Demond Robinson’s (“Robinson”) motion for an order nunc pro tunc pursuant to Rule 47 of the Federal Rules of Criminal Procedure. For the reasons explained below, the court construes Robinson’s filing as a successive motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 and summarily dismisses his motion.

On May 26, 2004, a jury found Robinson guilty of (1) one count of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846; (2) two counts of possession of cocaine and aiding and abetting in violation of 18 U.S.C. § 2 and 21 U.S.C. § 841(a)(1), (b)(1)(A), (b)(1)(C); (3) two counts of possession and use of a firearm in furtherance of a drug crime and aiding and abetting in violation of 18 U.S.C. §§ 2, 924(c)(1); and (4) two counts of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The court sentenced Robinson to 960 months’ imprisonment on June 18, 2007.¹ On

¹ Robinson initially was sentenced on December 17, 2004, but the Fourth Circuit remanded the case for resentencing under the advisory sentencing guidelines pursuant to United States v. Booker, 543 U.S. 220 (2005). On remand, the court again imposed a 960-month term of imprisonment.

February 14, 2008, the United States Court of Appeals for the Fourth Circuit affirmed his conviction and sentence. United States v. Robinson, No. 07-4638, 2008 WL 398245, at *2 (4th Cir. Feb. 14, 2008) (unpublished). Robinson subsequently filed a motion to vacate, set aside, or correct his sentence under § 2255. The court summarily dismissed Robinson's motion. United States v. Robinson, Cr. No. 6:03-616-HMH (D.S.C. Oct. 27, 2008) (unpublished). Robinson appealed, and the United States Court of Appeals for the Fourth Circuit dismissed his appeal. United States v. Robinson, No. 08-8465, 2009 WL 3651641, at *1 (4th Cir. Nov. 5, 2009) (unpublished). On August 5, 2010, Robinson filed a motion for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure. Finding his claims without merit, the court denied his motion. United States v. Robinson, Cr. No. 6:03-616-HMH (D.S.C. Aug. 11, 2010) (unpublished). Robinson appealed, and the United States Court of Appeals for the Fourth Circuit dismissed the appeal, explaining that Robinson's Rule 60 motion directly attacked his convictions and therefore was an unauthorized and successive § 2255 motion. United States v. Robinson, No. 10-7197, 2011 WL 880761, at *1 n.* (4th Cir. Mar. 15, 2011) (unpublished).

In his instant motion, Robinson challenges, under the Double Jeopardy Clause, the 300-month consecutive sentences the court imposed for the two counts of possession and use of a firearm in furtherance of a drug crime in violation of 18 U.S.C. § 924(c). (Robinson Mot., generally.) Because Robinson attacks his § 924(c) conviction and sentence, the court must construe his filing as a successive § 2255 motion. United States v. Winestock, 340 F.3d 200, 206 (4th Cir. 2003). Robinson, however, has not obtained authorization from the Fourth Circuit to file a successive § 2255 motion, and therefore, the court dismisses the motion for lack of jurisdiction. Id. at 205.

It is therefore

ORDERED that the clerk of court shall recharacterize Robinson's motion as a motion to vacate pursuant to 28 U.S.C. § 2255. It is further

ORDERED that Robinson's § 2255 motion, docket number 251, is summarily dismissed. It is further

ORDERED that a certificate of appealability is denied because Robinson has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
August 8, 2011

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.